

REMARKS

This amendment is submitted in response to the Decision on Petition dated June 2, 2008 (the "Decision"), which has a shortened statutory period for response set to expire on July 2, 2008.

With this renewed petition, Applicant is resubmitting the claim of priority and respectfully traverses the grounds of dismissal set forth in the Decision issued by the Office of Petitions.

According to the Decision, the petition was dismissed because Applicant is incorporating by reference the continuation-in-part case, U.S. Serial No. 09/815,122, issued as U.S. Patent No. 6,836,839, in the claim to priority. The Office cites the Dart Industries case for the proposition that when a benefit claim under 35 U.S.C. § 120 is submitted after the filing of an application, the reference to the prior application cannot include an incorporation by reference of the prior application because such an incorporation constitutes new matter. However, the holding of this case as well as the relevant sections under the MPEP are not applicable given the underlying facts related to the present application. As originally filed, the present application included a cross-reference to the 09/815,122 case and specifically incorporated the subject matter of that application by reference. Thus, with respect to current petition to claim priority to the 09/815,122 case under 35 U.S.C. § 120, there cannot be any new matter introduced – this application has already been incorporated by reference.

For these reasons, Applicants submit that the current amendments to the specification are proper and should be entered by the Office.

Applicant believes all issues set out in the Decision on Petition have been addressed. If there are any questions, please contact the Applicants' undersigned representative at the number provided below.

Respectfully submitted,



John C. Carey
Registration No. 51,530
PATTERSON & SHERIDAN, L.L.P.
3040 Post Oak Blvd. Suite 1500
Houston, TX 77056
Telephone: (713) 623-4844
Facsimile: (713) 623-4846
Attorney for Applicant(s)